IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 2679 of 2006
DATE OF DECISION: 14.11.2006

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Chief Administrator, Haryana Urban Development HUDA.

..PETITIONER

VS.

Shamsher Singh and another.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Gourav Bakshi, Advocate
for the petitioner.

Mr. Shekar Verma, Advocate
for respondent No.1.

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ARVIND KUMAR, J.

The challenge in this petition filed under Articles 226/227 of the Constitution of India is to the award dated 16.3.2004 passed by the Labour Court, ordering re-instatement of workman with continuity of service, without back wages.

We have heard learned counsel for the parties and have also gone through the paper-book as also the impugned award.

It is settled proposition of law that the onus is on the workman to prove that he had completed 240 days in 12 calendar months preceding the date of termination. The workman led no evidence. On the contrary the petitioner-management on the basis of oral evidence of MW-1 Ram Pal SDE coupled with the documentary evidence i.e. Muster rolls Ex.M-1 to M-125 proved that the workman had only worked from 1.2.1996 to 28.4.1996 i.e. to say for a period of 78-1/2 days only. Thus, on the basis of said

evidence, the Labour Court has rightly concluded that he is not entitled to any protection as provided under Section 25-F of the Industrial Disputes Act, 1947 (for short the Act).

In the instant case the main grievance of the respondent-workman is the violation of Section 25-G of the Act. Section 25-G expressly provides procedure for retrenchment. It lays down that where any workman in an industrial establishment, who is citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other workman. In other words the workman who should be selected for retrenchment in a particular category, must be the last appointed one.

The counsel for the petitioner urges that the appointment of the workman was contractual and his services were terminated on account of non-renewal of contract of employment between the parties and, as such, falls within the ambit of provisions of Section 2(oo)(bb) of the Act. It does not amount to retrenchment and Section 25-G does not apply in this case. We are not at all convinced with the contention of learned counsel for the petitioner. Nothing has been produced on record to show that the appointment of the workman was contractual which comes to an end with efflux of time. The retrenchment has been defined in Section 2(oo) of the Act. It stipulates that the termination of a workman "for any reason whatsoever" would constitute retrenchment except in cases excepted in above-said sections itself. As discussed above, there is a failure on part of the petitioner-department to prove the case having fallen in any of the excepted categories contained in clause (bb) of Section 2(oo) of the Act, whereas the petitioner-department is heavily burdened to prove the same. Therefore, the case falls within the term termination of service "for any reason whatsoever". It would, thus, constitute retrenchment within the meaning of Section 2(oo) of the Act. Therefore, the Labour Court rightly set aside the termination of the services of the workman, which was made in violation of provisions of Section 25-G of the Act.

It is itself the case of the respondent-workman right from the

beginning that the persons junior to him were retained in service in violation of Section 25-G of the Act. WW-2 Jalmeg Raj had deposed from the record that one Avtar Singh had served from 1.4.1996 to 26.6.1996. The petitioner-department's own witness namely Ram Pal SDE (MW-1) has admitted that after the appointment of the petitioner one Avtar Singh who joined the petitioner-department on 1.4.1996 and worked up to 26.6.1996 i.e. much after the termination of the services of the workman. The retention of Avtar Singh, junior to the workman is also suggestive of the fact that the work was available with the petitioner-department when the services of petitioner were terminated. But no legal reason has been shown as to why the services of workman could not be continued after 28.4.1996. In this backdrop, the Labour Court has rightly held that the petitioner-department has violated the rule of "last come first go", as envisaged under Section 25-G of the Act.

Additionally, the impugned award is dated 16.3.2004 and the instant petition has been filed after delay of one year and ten months. Whereas the petitioner-department has to file the petition within a period of six months or at best within one year of the date when cause of action accrued, as held by the Hon'ble Supreme Court in the case of **Sadasivaswamy v. State of Tamil Nadu, AIR 1974 Supreme Court 2271**. There is absolutely no explanation for such a delay. Therefore, the instant petition also suffers from delay and latches.

We find no infirmity in the impugned award. The petition is wholly without merit and the same is accordingly dismissed, leaving the parties to bear their own costs.

(ARVIND KUMAR)
JUDGE

November 14,2006 **(J.S. NARANG)**
Jiten **JUDGE**

It is evident from the impugned award that the Labour Court on the basis of muster rolls Ex.M-1 to M-125, concluded that the workman served the petitioner-department from 1.2.1996 to 28.4.1996 i.e. to say for a period of 78-1/2 days only. Thus, on this basis, plea of the workman claiming violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short the Act) was turned down. However, on the basis of admission made by the petitioner-department's own witness namely Ram Pal SDE (MW-1) that after the appointment of the petitioner one Avtar Singh who joined the petitioner-department on 1.4.1996 and worked up to 26.6.1996 i.e. much after the termination of the services of the workman, the Labour Court has rightly held the petitioner-department guilty of not adhering to the rule of last come first go as envisaged under Section 25-G of the Act, irrespective of the fact that the workman had not rendered service for a period of 240 days. The retention of Avtar Singh, junior to the workman is also suggestive of the fact that the work was available with the petitioner-department when the services of petitioner were terminated. But no legal reason has been shown as to why the services of workman could not be continued after 28.4.1996. An attempt has been made by the learned counsel for the petitioner to show that the case of the petitioner falls within the ambit of provisions of Section 2(oo)(bb) of the Act, since his services were terminated on account of non-renewal of contract of employment between the parties. But we are not at all convinced with the contention of learned counsel for the petitioner. Nothing has been produced on record to show that the appointment of the workman was contractual which comes to an end with efflux of time. The retrenchment has been defined in Section 2(oo) of the Act. It stipulates the termination of a workman “for any reason whatsoever” would constitute retrenchment except in cases excepted in above-said sections itself. As discussed above, there is a failure on part of the petitioner-department to prove the case having fallen in any of the excepted categories contained in clause (bb) of Section 2(oo) of the Act, whereas the petitioner-department is heavily burdened to prove the same. Therefore, the case falls within the term termination of service “for any reason whatsoever”. It would, thus, constitute retrenchment within the meaning of Section 2(oo) of the Act. Therefore, the Labour Court rightly set aside the termination of the services of the workman, which was made in

violation of provisions of Section 25-G of the Act.

Moreover, the instant petition suffers from delay and latches as well. The impugned award is dated 16.3.2004 whereas the instant petition has been filed after delay of one year and ten months. There is absolutely no explanation for such a delay. The Supreme Court in the case of **Sadasivaswamy v. State of Tamil Nadu, AIR 1974 Supreme Court 2271** has clearly held that an aggrieved party has to move the Court within a period of six months or at best within one year of the date when cause of action accrued. Sadasivaswamy's case (supra) has been followed by this Court in the case of **Harvinder Singh vs. State of Punjab & Ors. 2005 (2) SLR 587**. Therefore, the instant petition also suffers from delay and latches. No relief can be granted to the petitioner